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No. 02-1122

In the
Supreme Court of the United States

NELSON O. ROBLES,
Petitioner

-versus-

PRINCE GEORGE'S COUNTY, MARYLAND, JAMES ROZAR and ANTONIO DEBARROS,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

REASONS FOR DENYING PETITION 2

I. The Fourth Circuit's decision does not conflict with this Court's decisions 4

II. The application of the Fourteenth Amendment to the facts of this case does not conflict with decisions of other circuits 6

CONCLUSION 8

TABLE OF AUTHORITIES

Cases

Albright v. Oliver, 510 U.S. 266, 115 S.Ct. 807 (1994) 7
Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034 (1987) 4
Fisher v. Washington Metropolitan Transit Authority, 690 F.2d 113 (4th Cir. 1982) 5
Hope v. Pelzer, 122 S.Ct. 2508 (2002) 4, 5
Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000) 7
Murphy v. Lynn, 118 F.3d 938 (2d Cir. 1997) 7
Robles v. Prince George's County, 302 F.3d 262 (4th Cir. 2002) 4
Wilson v. Layne, 526 U.S. 603, 119 S.Ct. 1692 (1999) 4

STATEMENT OF THE CASE

This petition arises from an action originally filed in Circuit Court for Prince George's County, Maryland. Nelson O. Robles, Petitioner-Appellant (hereinafter referred to as "Petitioner") filed suit against the Prince George's County, Maryland, James Rozar and Antonio DeBarros, Respondents-Appellees (hereinafter referred to as "the Respondents"), alleging that the Respondents violated his rights under the Fourth and Fourteenth Amendments, the Maryland Constitution and subjected him to intentional infliction of emotional distress when they handcuffed him to a pole and left him to be picked up by officers from another jurisdiction. Petitioner also alleged that the County had a policy or custom of permitting officers to violate citizens' rights. This claim was bifurcated.

After being served with the Complaint, the County removed the case to the United States District Court for the District of Maryland. The District Court granted summary judgment to the Respondents on Petitioner's federal claims on the basis of qualified immunity. The court also granted summary judgment on the intentional infliction of emotional distress claim. The District Court retained jurisdiction over Petitioner's claims brought pursuant to the Maryland Constitution. These claims were tried before a jury, which returned a verdict in favor of Petitioner on his claim that his state due process rights were violated and awarded him $647,000 in compensatory and punitive damages. The jury denied Petitioner's claim that he had been subject to an illegal seizure.

The Respondents filed a motion for remittitur or, in the alternative, a new trial based upon the excessiveness of the verdict. The District Court granted the motion for remittitur and reduced the jury award to $240,000. The Petitioner rejected the court's remittitur and elected to have a

new trial solely on the issue of damages for the violation of Petitioner's due process rights. The second jury awarded Petitioner $25,000 in compensatory damages against all of the Respondents and awarded punitive damages of $5,000 and $10,000 against Rozar and Prince George's County, respectively.

Petitioner, pursuant to 42 U.S.C. § 1988, filed a motion seeking attorney's fees, claiming that he was the prevailing party. The Respondents opposed the motion on the grounds the Petitioner was not the prevailing party for purposes of § 1988. The District Court denied Petitioner's motion for attorney's fees.

Petitioner filed an appeal to the Fourth Circuit Court of Appeals claiming 1) that the District Court erred when it granted summary judgment on the basis of qualified immunity; 2) that the court abused its discretion in granting remittitur of the jury's award; 3) that the court erred when it failed to award attorney's fees; and 4) that the court erred when it declined to reverse the jury's verdict on his unreasonable seizure claim. The Respondents filed a cross-appeal contending that there was no constitutional violation and that Prince George's County was not liable for punitive damages. With the exception of reversing the award of punitive damages against the County, the Fourth Circuit affirmed the District Court's rulings. Petitioner subsequently filed a petition for rehearing and rehearing en banc. The Court of Appeals denied the petition.

REASONS FOR DENYING THE PETITION

There are no compelling reasons for granting certiorari. Petitioner argues that review of the Fourth Circuit's opinion "is necessary to avoid the erosion of the protection afforded by § 1983 within the Fourth Circuit, as well as other circuits." Petitioner contends that under the

Fourth Circuit's application of the qualified immunity doctrine, a similar prior case is necessary to demonstrate that a right is clearly "clearly established." According to Petitioner, the Fourth Circuit recognized the correct standard but "misconstrued this Court's ruling in Creighton v. Anderson (sic), and failed to properly apply the standards for determining whether a right is clearly established, which were outlined in United States v. Lanier, 520 U.S. 259, 271 (1997); Wilson v. Layne, *supra*; Saucier v. Katz, 533 U.S. 194 (2001); and most recently in Hope v. Pelzer, 122 S.Ct. 2509 (2002).

Petitioner also claims that review of the Fourth Circuit's opinion is necessary to resolve a conflict among the circuits on the issue of when an arrest ends and when pre-trial detention begins. According to Petitioner, the "split of authority" on the issue of whether the Fourth Amendment applies to actions that occur post-arrest "leads to incongruous results for those seeking to vindicate their Fourth Amendment rights in the various circuits.

Neither the Fourth Circuit's actual ruling, nor the record below, raise the questions presented by the Petition. The ruling does not conflict with Hope v. Pelzer or any other decision of this Court and has no far-reaching constitutional implications. This case is a not-so veiled attempt to recover attorney's fees. Petitioner prevailed on his state constitutional claim and reversal of the Fourth Circuit's decision will not change his damage award. Petitioner only seeks to have his federal claims re-instated so that he may petition for attorney's fees. The Fourth Circuit's decision was proper in all respects and Respondents respectfully urge this Honorable Court to deny the Petition for Writ of Certiorari.

I.

THE FOURTH CIRCUIT'S DECISION DOES NOT CONFLICT WITH THIS COURT'S DECISIONS.

Petitioner contends that the Fourth Circuit's opinion conflicts with the Supreme Court's decisions in Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987), Wilson v. Layne, 526 U.S. 603, 119 S.Ct. 1692, 143 L.Ed.2d 818 (1999) and Hope v. Pelzer, __ U.S. __, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002).

Petitioner incorrectly asserts that the Court's application of the qualified immunity defense discloses the possibility of a finding of liability unless there is "legal precedent holding that the official's precise conduct is unconstitutional." The court in Robles clearly recognized and followed the standard articulated in Wilson, stating that "[a]though notice does not require that the 'very action in question has previously been held unlawful,' it does mean that in light of the pre-existing law the unlawfulness must be apparent." Robles v. Prince George's County, 302 F.3d 262, 270 (4th Cir. 2002)(quoting Wilson, 526 U.S. at 615). The Court correctly recognized that the cases cited by Petitioner were either not dispositive or "inapposite."

The facts in Hope, for instance, clearly are distinguishable from the facts of this case and it was decided under a different standard. There, a prison inmate was tied to a hitching post, shirtless for seven hours and suffered sun burn. Hope, 122 S.Ct. at 2512-13. The inmate was given water only once or twice, was provided no bathroom breaks and was taunted by a guard about his thirst. Id. at 2513. The practice of tying inmates to the hitching post for extended periods also caused muscle aches and substantial pain when the sun heated the handcuffs that shackled the inmates to the post, or the post itself. Id. at n. 2. The handcuffs would burn

and chafe inmates' skin. Id.

This Court held that the use of the hitching post under the circumstances described above violated the Eighth Amendment's prohibition against cruel and unusual punishment. Id. at 2514. "This punitive treatment amounts to gratuitous infliction of "wanton and unnecessary" pain that our precedent clearly prohibits." Id. at 2515. In denying the officers' claim of qualified immunity, the Court held that not only did its Eighth Amendment cases give prison officials fair warning that their use of the hitching post was unconstitutional but that Eleventh Circuit precedent, a prison regulation, and a Department of Justice report informing prison officials of the "constitutional infirmity" of the use of the hitching post also made the violation apparent. Id. at 2516. It is plain from the Court's decision that it was the infliction of "unnecessary and wanton pain" that made the use of the hitching post unconstitutional. The Court recognized that if prison officials had followed their own policy of recording responses to offers of bathroom and water breaks and permitting release from the post whenever a prisoner tells an officer he is ready to go back to work, the use of the hitching post would have been more analogous to a practice that had been upheld in another Eleventh Circuit case. Thus, the use of the hitching post itself was not unconstitutional.

The court in Robles specifically addressed Fourth Circuit precedent and other cases cited by Petitioner to demonstrate how the Respondents were not given fair warning that their actions were unconstitutional. Those cases, as noted by the court, are "inapposite" and "involve instances where detainees were subject to physical abuse or prolonged and inhumane conditions of detention." Robles, 302 F.3d at 271. For instance, Fisher v. Washington Metropolitan Transit Authority, 690 F.2d 113 (4th Cir. 1982), involved detention of a plaintiff while nude in view of

members of the opposite sex. No further distinction between the facts in Fisher and the case at bar need be made. The fact that a case recognized that a detainee has a constitutionally protected right "not to be subjected by state action to involuntary exposure in a state of nakedness to members of the opposite sex unless that exposure is reasonably necessary in maintaining her otherwise legal detention" does not clearly establish that the actions alleged by Petitioner are unconstitutional. This is particularly the case when implicit in the ruling is the fact that one may be detained in a state of nakedness, which also can be degrading or humiliating.

In this case, Petitioner was handcuffed to the post for 10 minutes or less and he was not subjected to any physical harm nor did any member of the public observe him. No case, statute or rule has been presented demonstrating that is unconstitutional to handcuff or shackle a detainee to a stationary object for a brief period of time. Implicit in Hope is the fact that tying an individual to a post is not unconstitutional. Rather, it is the manner of the detention that raises a constitutional question. On the unique facts and circumstances of this case, it cannot be said that the officers had fair notice that their actions were unconstitutional.

The Fourth Circuit was correct when it affirmed the grant of qualified immunity and its opinion does not conflict with any prior rulings of this Court. At most, as stated by Petitioner, the Court of Appeals misapplied a properly stated rule of law, a circumstance under which a writ of certiorari is rarely granted. See, S.Ct. Rule 10.

II.

THE APPLICATION OF THE FOURTEENTH AMENDMENT TO THE FACTS OF THIS CASE DOES NOT CONFLICT WITH DECISIONS OF OTHER CIRCUITS.

Petitioner claims that the Fourth Circuit's rejection of his claim that his right to be from an unreasonable seizure was violated conflicts with decisions of other circuits. The Petition, however, does not bear this out. Most of the circuits identified by Petitioner either recognize that the Fourth Amendment does not apply to post-arrest encounters or have not addressed the issue directly. Thus, Petitioner can only hope to rely on two Second Circuit decisions, Lauro v. Charles, 219 F.3d 202 (2d Cir. 2000) and Murphy v. Lynn, 118 F.3d 938 (2d Cir. 1997), to support this argument.

In Lauro, the court held that the plaintiff's Fourth Amendment rights were violated when after his arrest he was displayed to the press in a staged "perp walk." The court, however, clearly viewed the unlawful act from the moment of the "seizure." The court reasoned that "whether viewed as (1) a separate seizure that occurred when Lauro was forcibly removed from the station and brought back in, or (2) a continuation and aggravation of the seizure that occurred when he was arrested... the Fourth Amendment applied." Lauro, 219 F.3d at 212. In Murphy, the plaintiff claimed pursuant to § 1983, that his Fourth Amendment rights had been violated when he was arrested without probable cause, charged with a crime and ordered not to leave the state. Because Murphy's claim alleged that a criminal prosecution had been initiated against him with probable cause, the court, citing Albright v. Oliver, 510 U.S. 266, 274-275, 114 S.Ct 807, 127 L.Ed.2d 114 (1994)(plurality), held that he must show a violation of his rights under the Fourth Amendment in order to prevail. Murphy, 118 F.3d at 944. The court, again citing Supreme Court precedent, reasoned that restrictive conditions of release "are appropriately viewed as seizures within the meaning of the Fourth Amendment." Id. at 946. The holdings in Lauro and Murphy are not in conflict with the Fourth Circuit's decision in Robles. Rather, they

rest upon facts and legal principals that are clearly distinguishable from the facts in the instant matter.

CONCLUSION

There is no compelling reason to grant the writ of certiorari. The decision of the Fourth Circuit was not error. Furthermore, the decision of the Fourth Circuit is not in conflict with other circuit decisions with facts similar to the facts of the instant matter.

The writ of certiorari should be denied.

Respectfully submitted,

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